

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

STANADYNE LLC. et al.,¹

Debtors.

Chapter 11

Case No. 23-10207 (TMH)
(Jointly Administered)

Re: Docket No. 297

**VITESCO TECHNOLOGIES GMBH'S AND VITESCO TECHNOLOGIES USA, LLC'S
OBJECTION TO NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED,
ASSIGNED, AND SOLD EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Vitesco Technologies GmbH and Vitesco Technologies USA, LLC (collectively, “Vitesco”), through counsel, for their Objection to *Notice To Contract Parties To Potentially Assumed, Assigned, And Sold Executory Contracts And Unexpired Leases* (“Cure Notice”) [ECF No. 297] state:

1. Vitesco Technologies GmbH is a party to at least thirteen Scheduling Agreements with Debtor Pure Power Technologies, Inc. (collectively, the “Purchase Orders”). However, the Cure Notice does not identify with specificity the Purchase Orders that Debtors seek to assume and assign because the Cure Notice identifies only a “Schedule Release dated October 26, 2021 between Pure Power Technologies and Vitesco GmbH” with a corresponding cure amount of \$0. [ECF No. 297].

2. Simply stated, Vitesco Technologies GmbH cannot determine from the information provided in the Cure Notice the Purchase Orders at issue or their status. Vitesco Technologies GmbH has requested additional information from Debtors’ counsel, but as of the

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Stanadyne LLC (0378); Pure Power Technologies, Inc. (5202); Stanadyne PPT Holdings, Inc. (2594); and Stanadyne PPT Group Holdings, Inc. (1734). The Debtors' headquarters are located at 405 White Street, Jacksonville, North Carolina 28546.

time of this Objection, has not received information sufficient to enable it to identify the executory contracts that Debtors seek to assume and assign. Therefore, Vitesco Technologies GmbH seeks clarification from Debtors as to exactly which contracts it seeks to assume and assign. The cure amount owing to Vitesco Technologies GmbH under the Purchase Orders is \$70,838.

3. Vitesco Technologies USA, LLC is a party to a Bill of Sale with Debtor Stanadyne LLC dated October 17, 2022 that is identified on the Cure Notice. There is a payment of \$1,000,000 (USD) due on July 5, 2023 by Debtor under the Bill of Sale. The Cure Notice incorrectly reflects a cure amount of \$0.

OBJECTION

4. Section 365(b) of the Bankruptcy Code requires a debtor to fully cure all defaults existing at the time of assumption before assuming an executory contract and provide adequate assurance of future performance under the contract. *See 11 U.S.C. §365(b)(1); In re DBSI, Inc., 405 B.R. 698, 704 (Bankr. D. Del. 2009)* (“Pursuant to 11 U.S.C. § 365(b)(1), if there has been a default under an unexpired lease of a debtor and the debtor wants to assume and assign the lease, the debtor must: (A) cure the default, or provide adequate assurance that it will promptly cure the default; (B) compensate, or provide adequate assurance that it will promptly compensate, the non-debtor party to the lease for any actual pecuniary loss resulting from the debtor's default; and (C) provide adequate assurance of future performance under the lease. The purpose of § 365(b)(1) is ‘to restore the ‘debtor-creditor relationship . . . to pre-default conditions,’ bringing the [loan] back into compliance with its terms.”) (citations omitted). This includes both pre-petition and post-petition defaults. *See In re Burger Boys, 94 F.3d 755, 763 (2d Cir. 1996).*

5. There are at least two problems with Debtors' Cure Notice.

6. First, with respect to Vitesco Technologies GmbH, Debtors may not assume the Purchase Orders without first curing all pre-petition and post-petition defaults and providing adequate assurance of future performance with respect to the executory contracts they seek to assume and assign. However, Vitesco Technologies GmbH cannot ascertain which Purchase Orders are contemplated for assumption and assignment under the Cure Notice. The cure amount owing under the Purchase Orders is \$70,838 and not \$0 as listed in the Cure Notice. Should Debtors later identify with specificity the Purchase Orders designated for assumption and assignment, Vitesco Technologies GmbH reserves the right to supplement this Objection.

7. Second, the cure amount under the Bill of Sale with Vitesco Technologies USA, LLC is inaccurate and should be \$1,000,000. Under the Bill of Sale, the payment from Debtor is due on July 5, 2023. Under the Cure Notice, cure objections are due on June 12, 2023. [ECF No. 297]. However, the sale hearing is July 10, 2023, which means that if Debtors fail to timely remit the payment to Vitesco Technologies USA, LLC on July 5, 2023 and/or before the sale hearing, the payment will be an outstanding obligation of Debtor as of the date of the sale hearing, which is the relevant time that the requirements of § 365 must be satisfied.

8. Vitesco reserves the right to amend, supplement, or otherwise modify this Objection, and to raise further objections to the assumption and assignment or cure amounts with respect to any contract between Vitesco and Debtors.

WHEREFORE, Vitesco respectfully requests that the Court sustain this Objection and grant Vitesco such additional relief that is just and equitable.

Dated: June 12, 2023

CROSS & SIMON, LLC

/s/ Kevin S. Mann

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